CF0000064567

(2)

Division Bench (riminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Cr.A.No. 1474 of 2000

CRIMINAL APPEAL UNDER SECTION 374 (2)
OF THE CODE OF CRIMINAL PROCEDURE, 1973

Appellant: Accused (IN JAIL)

Raju alias Jhabbu, aged 35 years, son of Biju Yadav, resident of village Khandwa, P.S.Kasdol, District Raipur, M.P.

versus

Respondent: The State of Madhya Pradesh

...

CONVICTION: SENTENCE:

XI-HC-78

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मामला क्रमांक Cr.A.No.1474 **सन् 200०**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON. SHRI L.C. BHADOO AND HON. SHRI DHIRENDRA MISHRA,JJ

Criminal Appeal No. 1474 OF 2000

Appellant	**Raju alias Jhabbu**
	Vs
Respondent	**State of Madhya Pradesh**

Mr. J.R. Verma with Mr. Arun Kochar, learned counsel for the appellant.

Mr. Akhil Mishra, learned Panel Lawyer for the State/respondent.

ORAL JUDGMENT
(28.11.2006)

Per L.C. Bhadoo, J

Accused/appellant Raju @ Jhabbu has preferred this appeal under Section 374(2) of the Code of Criminal Procedure questioning the legality and correctness of judgment of conviction and order of sentence dated 17.4.2000 passed by II Additional Sessions Judge,

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मामला क्रमांक Cr.R.No.474 **सन् 2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Baloda Bazar in S.T.No. 209/96 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Sections 302/34, 201/34 of the IPC, sentenced him to undergo imprisonment for life and pay a fine of Rs. 2,000/- and to undergo rigorous imprisonment for three years and pay a fine of Rs. 1,000/-, in default of payment of fine to further undergo S.I. for one year and six months, respectively.

2. Case of the prosecution in brief is that in the night of 28.1.1996 in between 8.00 to 10.00 p.m. the accused/appellant in conspiracy with Bhukhan took Bhagwat towards Mahanadi which is existing between village Nandniya and Pahanda and committed the murder of Bhagwat. The dead body of Bhagwat was buried in the riverbed in order to screen the evidence of murder for saving themselves from the punishment. Bhagwani Prasad Verma lodged a missing report (Ex.P/14) on 2.2.1996 in the Police Station – Kasdol to the effect that Bhukhan Kurmi of Jamdeeh took his brother-in-law Bhagwat to village Khainda and thereafter Bhagwat has not returned, even he is not in the village Khainda whereas Bhukhan Kurmi has returned back. On

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the basis of this report the matter was investigated. During police custody Bhukhan gave memorandum (Ex.P/7) on 3.2.1996 regarding the place where the dead body of Bhagwat was buried after committing his murder, in pursuance of that the dead body was exhumed from the riverbed at the instance of Bhukhan. Inquest report (Ex.P/6) of the dead body of Bhagwat was prepared on 3.2.1996 after giving notice (Ex.P/5) to the Panchas. Dehati Nalishi (Ex.P/16) was lodged by K.B. Dwivedi (PW-25) on 3.2.1996, based on that First Information Report (Ex.P/15) was registered. Dead body of Bhagwat was sent for postmortem examination to the Primary Heath Centre, Lawan under Ex.P/12 where Dr. Ashok Mohan Das conducted postmortem and prepared the postmortem report (Ex.P/12). He opined that the cause of death was asphyxia due to throttling and it was homicidal in nature. During investigation accused/appellant Raju was also apprehended and while in police custody, he gave memorandum (Ex.P/1) on 16.3.1996 in pursuance of which clothes of the deceased were recovered at the instance of Raju under Ex.P/2. The clothes were put to identification before the Executive Magistrate A.K.Vaishnav (PW-22), before whom Munjan (PW-7) and Vimla, wife

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the deceased (not examined) identified the clothes in the presence of Gorelal and Premdas. The identification memo Ex.P/13 was prepared by the Tehsildar. After completion of the investigation charge sheet was filed against the accused persons namely Raju, Bhukhan, Keshav and Sukhnandan. However, during the trial Bhukhan expired, therefore, the case against him was abated.

3. Prosecution in order to establish the charges against the accused persons examined 34 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and pleaded innocence.

4. Learned Additional Sessions Judge after hearing counsel for the respective parties acquitted accused Keshav Prasad and Sukhnandan from the charge of Section 212 of the IPC. However, accused Raju Yadav was convicted and sentenced as aforementioned.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5. We have heard Mr. J.R. Verma with Mr. Arun Kochar, learned counsel appearing on behalf of the accused/appellant and Mr. Akhil Mishra, learned Panel Lawyer for the State/respondent.

6. Conviction of the accused rests on the circumstantial evidence as no ocular evidence or eyewitness were available. As per the settled law in order to rest conviction based on the circumstantial evidence, as per the decision of the Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220.** the circumstantial evidence must satisfy the following tests:

a. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

b. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

c. the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

d. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

7. Now, we shall scrutinize the evidence available on record based on which the prosecution has tried to establish the charge against the accused. The circumstances relied upon by the prosecution to connect the accused with the crime in question are as follows:

(i) that the accused made extra judicial confession before PW-5 Hardas, PW-17 Hemdas and PW-27 Devilal;

(ii) that clothes of the deceased were recovered at the instance of the accused from riverbed of Mahanadi.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(iii) that the letter Article "A" was written by accused Raju confessing that the murder was committed by him.

8. So far as the first circumstance is concerned, PW-5 Hardas and PW-27 Devilal have turned hostile and they have not supported the prosecution case. Therefore, only the evidence of PW-17 Hemdas remains to be scrutinized to see as to whether based on his evidence the prosecution has been able to establish that the accused made extra judicial confession before him. PW-17 Hemdas has stated that one year prior to the date of recording of his Court statement i.e. on 1.8.1997 accused Raju met him in Raipur and asked him to save him, on which he asked Raju as to what he had done, whereupon Raju informed him that Bhukhan had assured him to give Rs.5,000/- and he admitted that he has committed a mistake by murdering Bhagwat. He further stated that accused Bhukhan had asked him that if he commits the murder of Bhagwat, he will give him Rs.5,000/- and that is why he committed the murder of Bhagwat. On this he enquired from Raju as to in what manner he committed the murder, then Raju disclosed that he committed the murder of Bhagwat after getting him drunk, when

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Bhagwat due to excess of consumption of liquor asked for water, at that time he pressed his neck from behind with muffler and thereafter, called Bhukhan who also helped him holding Bhagwat. He has further stated that accused Raju has informed him that thereafter he (Raju) along with Bhukhan buried the dead body of Bhagwat in the riverbed of Mahanadi. It was also disclosed by accused/appellant Raju that since accused Bhukhan had told him that there is money in the pocket of Bhagwat, he again went to that place on the next day, tried to search the money in the pocket but there was no money in his pocket, on which he again buried the dead body there, whereas the clothes were buried at some other place. In the cross examination, this witness has stated that when the police came to his village, on that day he went along with the police to the house of Raju. The police exhumed the dead body of Bhagwat on the same day. He disclosed to the police about the disclosure made to him by Raju. Therefore, in view of the evidence of this witness, case of the prosecution that the present accused made extra judicial confession before this witness, the evidence adduced by the prosecution does not inspire confidence of the Court particularly when as per the evidence of this witness

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

before the dead body was exhumed on 3.2.1996 at the instance of Bhukhan, this witness had already disclosed to the police about the extra judicial confession made by Raju before him. It does not fit to the reason that when this fact was disclosed by him to the police on 3.2.1996, why the statement of this witness was recorded on 9.3.1996 i.e. more than after one month. Moreover, Dehati Nalishi (Ex.P/16) was given by the investigating officer on 3.2.1996 after the dead body was exhumed and in this Dehati Nalishi the disclosure made by the present accused to Hemdas, in turn which was disclosed by Hemdas to police, does not find place. Therefore, for the reasons mentioned above regarding extra judicial confession made by accused Raju before PW-17 Hemdas, we do not find the evidence of this witness worth reliance. Apart from that there is nothing in the evidence of this witness which shows that how and why Raju reposed confidence in him that he will help him in this matter so he made extra judicial confession before him. Moreover, the other two witnesses i.e. PW-5 Hardas and PW-27 Devilal before whom Raju said to have made extra judicial confession, have turned hostile.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

9. So far as the second circumstance of recovery of the clothes of deceased Bhagwat at the instance of this accused is concerned, in the first instance as per the evidence of PW-17 Hemdas the accused Raju had already disclosed to him on 3.2.1996 that clothes of the deceased have been buried by him in the riverbed and in turn the same was disclosed to the police by Hemdas whereas the memorandum of the accused was recorded by the police on 18.3.1996, in pursuance of which clothes were said to have been recovered, therefore, it does not sound to reason because this fact was already disclosed by the accused to Hemdas on 3.2.1996 who in turn disclosed the same to the police. Thus, the said recovery cannot be said to be effected at the instance of accused Raju as the prosecution has failed to establish the fact beyond reasonable doubt that clothes of the deceased were only in the knowledge of accused. Moreover, the independent witnesses of recovery memo of the clothes have also turned hostile and they have not supported the prosecution case that the recovery of clothes was made at the instance of the accused. Even the clothes which are said to have been of the deceased were identified before the Tehsildar but the witness namely Vimla Bai, wife of the deceased who identified the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

clothes before the Tehsildar, has not been examined by the prosecution whereas the other witness namely Munjan who identified the clothes, has been examined as PW-7 but he has not stated anything in his statement regarding identification of the clothes before the Tehsildar. Therefore, there is no substantive piece of evidence regarding identification of clothes of the deceased. Even the clothes of the deceased had not been produced before the trial Court to get them exhibited. In view of the aforesaid reasons, the recovery of clothes of the deceased at the instance of accused Raju, has not been established.

10. As far as the third circumstance that the letter i.e. Article "A" written by accused Raju was seized from Ram Gopal Yadav, is concerned, in this letter accused Raju has not mentioned anything about the crime in question. Moreover, Ram Gopal has not been examined, no evidence has been adduced that the letter Article "A" is in the handwriting of Raju and there is no evidence that how and by which method the said letter reached to Ram Gopal. As such, based

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

on this letter the accused cannot be connected with the crime in question.

11. For the foregoing reasons, we are of the considered opinion that the circumstantial evidence adduced by the prosecution in order to connect the accused with crime in question suffers from material infirmity and it does not inspire confidence of the Court as the same does not stood up to the test laid down by the Apex Court in the above cited judgment for resting the conviction of accused on the circumstantial evidence.

12. In the result, the appeal is allowed. Conviction of the accused/appellant under Sections 302/34, 201/34 of the IPC and sentence imposed thereon, are set aside. He is acquitted of the charges leveled against him. The accused/appellant is in detention for more than 10 years. He is directed to be set at liberty forthwith, if not required to be detained in connection with any other offence.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.